

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1190 of 1973

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1-5 No

JAYANTILAL GOVIND BADSHAH

Versus

LAXMAN WAMAN SAPRE

Appearance:

MR BP DALAL for Petitioner

MR DD VYAS for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 04/09/98

ORAL JUDGEMENT

This Revision at the instance of the members of the Working Committee of Shri Kshtriya Gyan Prasharak Anathashraya Mandal, Navsari, is directed against the judgement dated 7.4.1973 passed by the District Judge, Valsad at Navsari in Civil Appeal No. 75 of 1971 whereby the learned judge set aside the judgement dated 30.11.1971 passed by the Civil Judge (S.D.), Navsari and dismissed the plaintiff's suit.

Necessary facts are: that the plaintiffs are Working Committee Members of Shri Kshtriya Gyan Prasharak Anathashraya Mandal, Navsari (hereinafter referred to as 'the plaintiff Mandal') which is registered under the Bombay Public Trust Act. The said members had purchased a residential property together with open site around it in the Navsari Municipal limits. The suit property consisted of one Bungali admeasuring 29'-6" x 13'-6" which was rented out to the original tenant deceased Laxman Waman Sapre initially on monthly rent of Rs. 20/-. The plaintiff filed a HRP suit for eviction and recovery of possession in the court of Civil Judge (S.D.), Navsari. It is alleged that the original tenant had raised on the suit premises permanent structure by addition of one room on the east and by construction and extension of new room and a new otta on the south. It is also alleged that the said alteration of permanent nature has been made without consent of the plaintiffs. The defendant filed written statement and denied the plaint allegations. The defendant averred that he had repaired and reconstructed the dilapidated bungali leased to him with the consent of the trustees of the plaintiff trust and within their knowledge and under their permission. It is further averred that the leased property was very old and in a dilapidated condition and therefore in order to keep it intact repairing was utmost necessary. The trial court by judgement dated 30.11.1971 decreed the plaintiffs' suit and directed the defendant to handover the vacant possession of the suit premises within two months from the date of the order. The defendant preferred appeal to the District Court, Bulsar at Navsari. The learned District Judge reversed the finding of the trial court on the issue of raising of permanent structure and dismissed the plaintiffs' suit by judgement and decree dated 7.4.1973. The plaintiff Mandal preferred the present revision application in the year 1973. This Court (Coram: A.N. Surti, J) being satisfied that the tenant had made a permanent alteration in the suit premises found the findings of the first appellate perverse and accordingly by judgement dated 24.12.1976 set aside the decree passed by the lower appellate court and restored the decree of eviction passed by the trial court. The court however granted three years' time to the tenant to vacate the premises on usual conditions. The legal representatives of the original defendant Laxman Waman Sapre approached the apex court by way of Special Leave to appeal which was registered as Civil Appeal No. 2046 of 1977. The Supreme Court by judgement dated 9.3.1994 set aside the judgement of this court on the ground that the learned

judge did not assign any reason for disturbing the findings of the first appellate court. The court remitted the matter to this court with a request to dispose of the same within three months from the date of receipt of the order. The revision application was dismissed by this court by order dated 12.8.1994 for want of prosecution. However, a Miscellaneous Civil Application was filed for restoration of the revision application on the ground that the counsel for the plaintiffs in the Supreme Court did not inform of the orders of the apex Court. This court by order dated 23.1.1998 restored the revision application to its original number. The matter was fixed for final hearing as a first case on 2.2.1998. However, during the course of hearing it revealed that it was necessary to take steps for bringing legal representatives of deceased Maltiben respondent No. 1/1. This has caused some delay. The matter is taken up today for hearing after necessary orders on two Civil Applications.

It is contended by Mr. Dalal, learned counsel for the petitioner that in spite of sufficient evidence of permanent alterations in the suit property the first appellate court has committed an error in disturbing the finding of the trial court on unsustainable grounds. He read the judgement of the first appellate court and also invited my attention to the relevant evidence. On the other hand Mr. D.D. Vyas, Senior Advocate, appearing for the tenant respondents submits that the finding of the first appellate court does not call for any interference in exercise of powers under Section 29(2) of the Bombay Rent Act. It is also submitted that the alterations made is nothing but small physical change of temporary nature necessary for the purpose of residence of the tenant. It is also stated that construction of kitchen cannot be said to be a construction of permanent nature. The learned counsel has also invited my attention to Section 23(2) of the Bombay Rent Act which casts a duty on the landlord to keep the premises in good condition. The provision also gives an opportunity to the tenant to carry out necessary repairs after notice to the landlord. It is submitted that a notice Exh. 44 was given to the plaintiffs and when the plaintiffs did not carry out the repairs the tenant was left with no option but to carry out the repair on his own.

I have considered the rival contentions. It is an admitted fact that the premises rented out consists of Bungali admeasuring 29'-6" X 13'-6". The premises was inspected by the court commissioner, a Civil Engineer, Shri K.H. Parikh. He has been examined at Exh. 58. He has produced map Exh. 62 and his report Exh. 61. He

has marked by blue pencil the whole structure of Bungali which was about 30 to 35 years old and new structure in read pencil which was about 4 to 5 years old. This offending structure came up in the first fortnight of August 1969. It is not in dispute that a new room in place of otta has been constructed. Kitchen has been constructed on the open space on the eastern side of Bungali. One more room has been constructed. The first appellate court has considered that part of the roof had fallen which was necessary to be repaired. Certain walls were also repaired. If the construction work only related to repairing of the work and replacement of roof by corrugated cement sheets it can be understood that the alteration was necessary for the purpose of residence. The first appellate court has completely overlooked the construction of one room, kitchen and construction of room in place of otta. By no stretch of imagination such construction can be said to be of temporary nature or just for repairing. It is surprising that the first appellate court has described them as merely a small physical change of a temporary or unsubstantial nature. On thorough discussion, the trial court has found the addition and alteration of permanent nature. There was no reason for the appellate court to disturb the said finding. On the admitted facts the finding of the first appellate court is perverse which cannot be sustained. I have no hesitation in holding that this is not a simple case of repairing of roof and the walls but it is a case of construction of two rooms and kitchen which brings the case within the provisions of Section 13(1)(b) of the Bombay Rent Act. The plaintiff is entitled to decree for eviction on the ground under Section 13(1)(b).

In view of the aforesaid this Civil Revision Application is allowed and the judgement and decree passed by the District Judge, Bulsar dated 7.4.1973 in Regular Civil Appeal No. 75 of 1971 is quashed and set aside. The judgement and decree passed by the trial court dated 30.11.1971 is restored. The respondent is given two months time to vacate the premises on usual terms and conditions. Rule made absolute. There shall be no order as to costs.

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